IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

ORDER

SB CIVIL WRIT PETITION NO.1906/1998
Rama Kant Bhardwaj & Ors. V/s State of Rajasthan

DATE OF ORDER : : : 12.1.2007

PRESENT
HON'BLE MR. JUSTICE PREM SHANKER ASOPA

Mr.V.K. Joshi, for the petitioners.
Mr.H.V. Nandwana, Dy.GA, for the respondent.

By this writ petition, the petitioners, who are Bachelor of Aurvedic Medicine and Surgery, are seeking appropriate writ, order or direction for yearwise determination of vacancies in accordance with Rule 15 of the Rajasthan Ayurvedic, Unani, Homoeapathy and naturapathy Service Rules, 1973 (hereinafter to be referred as “the Rules of 1973”) after 15.3.1995.

The facts, in brief, of the case are that the petitioners are Bachelor of Aurvedic Medicine and Surgery and are waiting for their employment for last so many years. After quoting the rules, the petitioners have further mentioned the fact that after last recruitment on 15.3.1995, no determination of vacancies have been taken place.

Counsel for the respondents submits that on

13.3.1996 on the recommendation of RPSC, 712 persons have been given appointment and 12 were given appointment pursuant to other orders by the State Government. The vacancies of the year 1996 to 1999 will be determined yearwise and recommendation will be sent to the Government.

Heard counsel for the parties and further considered rival submission of the parties.

This Court has held the rule of determination of vacancies as mandatory in many cases. Rule 15 & 25 of the Rules of 1973 or any other similar rule of determination of vacancies and rule relating to filling the same by promotion has been further held to be mandatory to make yearwise promotion, but for direct recruitment, no such rules exists for making yearwise recruitment. Similar nature of rules have been considered by this Court in case of **Dr.Rajendra Surekha V/s State of Rajasthan & ors.** (SB civil writ petition No.1649/2002) decided on 4th August, 2006 and held that it is not obligatory on the part of the State Government to hold recruitment every year. Apart from above, it is well within the power of the Government under Rule 4 (b) of the Rules of 1973 to leave unfilled or hold any abeyance or abolished or

allow to lapse any post, permanent or temporary from time to time, without thereby entitling any person to any compensation. For exercise of said power, there must be bonafide reason of not filling the vacancies in a particular year. The relevant para 52, 53, & 55 of the said judgment are as follows:-

> “52. The bonafide reasoned decision of not to fill the vacancies in a particular year / years will also be a check on inaction / administrative lapse on the part of the Government machinery. In case an advertisement is not issued in same financial year in which vacancies has arisen and alternative arrangements made which continue for long time thereafter common advertisement is issued for vacancies of number of earlier years then the same will result in following serious consequences of jeopardising the career of the candidates :-
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> 1. Ineligible candidate in a particular year will become eligible in subsequent year even for the earlier years' vacancies when they were ineligible.
> 2. Eligible candidate in a particular year will become ineligible in subsequent year on account of over age.
> 3. No advertisement for number of years will cause frustration in young talented eligible youths which will further demoralise them in case they rendered ineligible on account of delayed advertisement.
> 4. Persons promoted against direct recruitment vacancies will get undue advantage on account of non-advertisement for number of years.
> 5. Some time charge of the higher post is given to a person holding the lower post, although he is not eligible for promotion to the higher post.
> 6. In case against the direct recruitment posts, adhoc appointments are made and

advertisement is issued after a decade and an adhoc employee is not selected for any reason then he has to face termination and after termination he would not be eligible for any other direct recruitment post.

53. In view of the discussion hereinabove, the question No.6 is answered in the manner that in the selection made by the RPSC and consequential appointment by the Government, no illegality has been committed for the year 1990-91. Bonafide reasoned appropriate order is necessary under the present scheme of the Rules of 1962 or any other service rule for keeping the post unfilled in the same financial year / years and advertising together.

55. Despite aforesaid judgments of this Court and Constitutional Bench / other judgments of Supreme Court, there exists no guideline for exercise of the said power, for keeping the post unfilled in particular financial year / years, therefore, a copy of this judgment be sent to the Chief Secretary for considering above aspect of the matter and for passing appropriate orders within reasonable time."

In reply to this writ petition, no reasons have been given for not holding the recruitment, but still it is open to the Government to take the decision in view of the aforesaid judgment and to pass appropriate order within a reasonable time in the matter of direct recruitment of Ayurved Chikitsak and further the decision be communicated to the petitioners.

In view of above, the writ petition is disposed of.

(P.S. ASOPA) J.

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